BILL NO. S-90-08-42

SPECIAL ORDINANCE NO. S-229-90

AN ORDINANCE approving Contract #90-07, **RESTORATION OF WATER MAINTENANCE UTILITY CUTS between MERGY CONSTRUCTION CO.** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract **#90-07, RESTORATION OF WATER MAINTENANCE UTILITY CUTS** by and between **MERGY CONSTRUCTION CO.** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety, is hereby ratified, and affirmed and approved in all respects, respectfully for:

Restoration of Water Maintenance Utility Cuts;

involving a total cost of Twenty-Seven Thousand Five Hundred Thirty and no/100 Dollars ($27,530.00).

SECTION 2. Prior Approval has been requested from Common Council on August 28, 1990. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay, City Attorney

CONSTRUCTION CONTRACT

Board Order 97-90 **Contract 90-07** **Work Order 64209**

THIS CONTRACT made and entered into in triplicate this 22 day of August, 1990, by and between MERGY CONSTRUCTION INC., herein called **CONTRACTOR**, and the **City of Fort Wayne, Indiana**, an Indiana Municipal Corporation, acting by and through the **Mayor** and the **Board of Public Works and Safety**, herein called **OWNER;**

WITNESSETH, that the **CONTRACTOR** and the **OWNER**, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

TO REPAIR UTILITY CUTS THAT WERE MADE BY THE WATER UTILITY.

All in accordance with the specifications of Contract Number 90-07, prepared by the Fort Wayne Water Engineering Department, Street Engineering Department, and Right of Way Cut Permit Specifications and special provisions, and according to the Detailed Specifications and Conditions contained within the Bid Specifications for Contract 90-07.

ARTICLE 2: THE CONTRACT SUM

The owner shall pay **CONTRACTOR** for the performance of the contract, the unit price sum of $27,530.00 (TWENTY SEVEN THOUSAND FIVE HUNDRED THIRTY DOLLARS AND NO CENTS). In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S** Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The **OWNER** shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by **OWNER** upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the **15th day** of the **following month**, ninety **(90%)** percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the **CONTRACTOR** and approved or revised by the **Engineering Department** of the **OWNER** less the aggregate of previous payments, will be paid by **OWNER** to the **CONTRACTOR.**

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works and Safety** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection. When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works and Safety**, which shall issue a **final certificate** stating that the work provided for in this Contract has been completed and is accepted. Thereupon, **the entire balance** of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The **CONTRACTOR** will furnish immediately a certificate from the **Industrial Board of the State of Indiana**, that he has complied with the **Workmen's Compensation Act** in accordance with **Statutes of the State of Indiana** and **Ordinances of the City of Fort Wayne.**

Any judgment rendered against the **City of Fort Wayne** in any suits for Damages for injury to real or personal property, or for injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any **Board of Arbitrators** or of the **Industrial Board of the State of Indiana** rendered against the **City of Fort Wayne** in any suit or claim arising under said **Workmen's Compensation** for accidental injuries or death suffered by his employees or the employees of any Subcontractor(s) in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The **CONTRACTOR** further agrees to be bound by **Section 15-13 (as amended)**, of the **Code of the City of Fort Wayne,** Indiana of 1974, passed by the **Common Council** of the **City of Fort Wayne, Indiana** as **General Ordinance No. G-34-78 (as amended)** on December 12th, 1978. The successful bidder shall file a **Manpower Utilization Report** for this project with the **Compliance Office** within ten **(10)** days after completion of construction or upon request of the **Office of Compliance.**

ARTICLE 7: PREVAILING WAGE SCALE

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the **Statutes of the State of Indiana**, and the **Ordinances of the City of Fort Wayne** according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. **Advertisement for Bids for Contract No. 90-07**
b. **Instructions to Bidders for Contract No. 90-07**
c. **Contractor's Proposal dated 8 AUGUST 1990.**
d. **Fort Wayne Engineering Department Drawing n/a**
e. **Supplemental Specifications for Contract No. 90-07**
f. **Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.**
g. **Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).**
h. **Prevailing Wage Scale.**
i. **Performance and Guaranty Bond.**
j. **Labor and Material Payment Bond.**
k. **Right-of-Way Cut Permit.**
l. **Comprehensive Liability Insurance Coverage.**
m. **Form 96.**
e. EBE Statement

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the **CONTRACTOR** shall furnish a **Performance and Guaranty Bond** in favor of the **City of Fort Wayne** in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one **(1)** year following written acceptance of the work by the **OWNER.**

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to **OWNER**, within ten **(10)** days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the **Statutes of the State of Indiana.**

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the **Director** of **Board of Public Works and Safety** of the **OWNER**, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of work covered by this Contract will be permitted except on prior written authorization by the **Board of Public Works and Safety.**

ARTICLE 12: COMPLETION DATE

The **CONTRACTOR** agrees to complete the work specified in the contract within sixty (60) **consecutive calendar days** after having been ordered by the **OWNER** to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the **OWNER** by the **Mayor** and **Board of Public Works and Safety** of the **City of Fort Wayne, Indiana**, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the **Common Council** of the **City of Fort Wayne, Indiana**, and should said **Common Council** fail to approve the same within ninety **(90)** days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR: MERGY CONSTRUCTION INC.

By: _____

Boni Mergy, President

CITY OF FORT WAYNE

By: _____

Paul Helmke, Mayor

BOARD OF PUBLIC WORKS AND SAFETY

By: _____

Charles E. Layton, Director
Public Works

By: _____

Michael McAlexander, Director
Public Safety

By: _____

Douglas M. Lehman, Director
Administration and Finance

ATTEST:

_____

Patricia Crick, Clerk

ACKNOWLEDGEMENT

STATE OF INDIANA)
SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 20th day of August, 1990, personally appeared the within named Boni Mergy, who being by me first duly sworn upon his oath says that she is the President of MERGY CONSTRUCTION INC. and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of MERGY CONSTRUCTION INC. for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Pamela S. Manoloff
Notary Public

Pamela S. Manoloff
Printed Name of Notary

My Commission Expires:

3-19-93

Resident of Allen **County.**

ACKNOWLEDGEMENT

STATE OF INDIANA)
SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 22nd day of Aug, 1990, personally appeared the within named **Paul Helmke, Charles E. Layton, Michael McAlexander, Douglas M. Lehman,** and **Patricia Crick,** by me personally known, who being by me duly of sworn said that they are respectively the **Mayor** of the **City of Fort Wayne**, and **Director, Members**, and **Clerk** of the **Board of Public Works and Safety** of the **City of Fort Wayne, Indiana**, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said **City** for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Carolyn S. Eschmann
Notary Public

CAROLYN S. ESCHMANN
NOTARY PUBLIC, STATE OF INDIANA
ALLEN CO.
MY COMMISSION EXPIRES JUNE 21, 1991
ISSUED THRU INDIANA NOTARY ASSOC.

_____
Printed Name of Notary

My Commission Expires: _____

Resident of _____ **County.**

Bond No.

Fidelity and Deposit Company

HOME OFFICE OF MARYLAND BALTIMORE, MD. 21203

Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That Mergy Construction, Inc.
(Here insert the name and address or legal title of the Contractor)
2235 Butler Road, Fort Wayne, Indiana 46808,
as Principal, hereinafter called Contractor, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, with its home office in the City of Baltimore, Maryland, U. S. A., as Surety, hereinafter called Surety, are held and firmly bound unto City of Fort Wayne, Indiana,
(Here insert the name and address or legal title of the Owner)
as Obligee, hereinafter called Owner,
in the amount of Twenty seven thousand five hundred thirty and no/100
Dollars ($ 27,530.00), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated August 13 19 90, entered into a contract with Owner for Restoration of Miscellaneous Concrete Cuts, Package #90-07

in accordance with drawings and specifications prepared by
(Here insert full name, title and address)
which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

(1) Complete the Contract in accordance with its terms and conditions, or

(2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and sealed this 13th day of August A.D. 19 90

In the presence of:

Mergy Construction, Inc. (SEAL)
Principal

By: [signature]
President
Title

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Diana L. Smith

By [signature] (SEAL)
Attorney-in-Fact
Title

C309f—
Approved by The American Institute of Architects, A.I.A. Document No. A-311 February 1970 Edition.

Bond No.

Fidelity and Deposit Company

HOME OFFICE OF MARYLAND BALTIMORE, MD. 21203

Labor and Material Payment Bond

Note: This bond is issued simultaneously with Performance Bond in favor of the owner conditioned on the full and faithful performance of the contract.

KNOW ALL MEN BY THESE PRESENTS:

That Mergy Construction, Inc.
(Here insert the name and address or legal title of the Contractor)
2235 Butler Road, Fort Wayne, Indiana 46808
as Principal, hereinafter called Principal, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, with its home office in the City of Baltimore, Maryland, U. S. A., as Surety, hereinafter called Surety, are held and firmly bound unto City of Fort Wayne, Indiana
(Here insert the name and address or legal title of the Owner)
as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of Twenty seven thousand five hundred thirty and no/100
(Here insert a sum equal to at least one-half of the contract price)
Dollars ($ 27,530.00), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated August 13 19 90, entered into a contract with Owner for Restoration of Miscellaneous Concrete Cuts, Package #90-07

in accordance with drawings and specifications prepared by
(Here insert full name, title and address)
which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a sub-contractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

(a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

(b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 13th day of August A.D. 19 90

In the presence of:

Mergy Construction, Inc. (SEAL)
Principal
By: President
Title

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By Attorney-in-Fact (SEAL)
Title

C309e½—
Approved by The American Institute of Architects, A.I.A. Document No. A-311 February 1970 Edition.

Read the first time in full and on motion by Burns, seconded by Talarico, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock ____.M.,E.S.T.

DATED: 8-28-90

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Burns, seconded by Henry, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	7			2
BRADBURY	✓			
BURNS	✓			
EDMONDS	✓			
GiaQUINTA				✓
HENRY	✓			
LONG	✓			
REDD	✓			
SCHMIDT	✓			
TALARICO				✓

DATED: 9-11-90.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) ~~(GENERAL)~~ (SPECIAL) (~~ZONING MAP~~) ORDINANCE ~~RESOLUTION~~ NO. S-229-90 on the 11th day of September, 19 90,

ATTEST: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL

Charles S. Redd
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of September, 19 90 at the hour of 2:00 o'clock P.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 14th day of September, 19 90, at the hour of 5:30 o'clock P.M.,E.S.T.

PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Contract #90-07, Restoration of Water Maintenance Utility Cuts

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works & Safety

SYNOPIS OF ORDINANCE: The Contract for #90-07, is for Restoration of Water Maintenance Utility Cuts. Mergy Construction Co. is the contractor. **Prior approval to be requested 8/28/90.**

EFFECT OF PASSAGE: Restoration of streets damaged by Water Maintenace Utility Cuts.

S-90-08-42

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $27,530.00 (Water Utility)

ASSIGNED TO COMMITTEE:

BILL NO. S-90-08-42

REPORT OF THE COMMITTEE ON CITY UTILITIES

PAUL M. BURNS, CHAIRMAN
MARK E. GiaQUINTA, VICE CHAIRMAN
HENRY, LONG, TALARICO

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ approving Contract #90-07, RESTORATION OF WATER MAINTENANCE UTILITY CUTS between MERGY CONSTRUCTION CO. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) ~~(RESOLUTION)~~

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Paul M. Burns			
Thomas P. Henry			
Samuel J. Talarico			
Cletus R Edmond			

DATED: 9-11-90.

Sandra E. Kennedy
City Clerk